

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PHILLIP E. SMITH,

Case No. 2:15-CV-1011 JCM (PAL)

Plaintiff(s),

ORDER

V.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

Defendant(s).

Presently before the court is the March 7, 2017, referral notice from the Ninth Circuit. (ECF No. 51). The Ninth Circuit has referred the question of “whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith” to this court. (*Id.* at 1); *see also* 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”).

“An appeal is frivolous ‘when the result is obvious or the appellant’s arguments are wholly without merit.’” *Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015) (quoting *Glanzman v. Uniroyal, Inc.*, 892 F.2d 58, 61 (9th Cir. 1989)), cert. denied sub nom. *Flynn v. Yellowstone Mountain Club, LLC*, 136 S. Ct. 1455 (2016).

Here, plaintiff Phillip Smith appeals the judgment entered as a result of this court's February 14, 2017, order dismissing plaintiff's claims as time-barred. *See* (ECF Nos. 43, 44, 47).

In the order granting defendants' motion to dismiss, this court found that "it is uncontested that Smith filed his lawsuit after the statute of limitations had run." (ECF No. 43 at 4). Additionally, this court deemed equitable tolling inappropriate because: (1) plaintiff was aware of his injury when he was first taken into custody, (2) he did not detrimentally rely on administrative

1 agency statements, (3) he did not allege facts showing that the prison denied him essential legal
2 services; (4) defendants have been prejudiced for lack of notice to investigate and preserve
3 evidence; and (5) plaintiff provided mere speculation that the officer defendants were spying on
4 him to ensure that he did not file a complaint. (*Id.*).

5 Therefore, it appears that plaintiff's arguments on appeal would likely be "wholly without
6 merit." *Blixseth*, 796 F.3d at 1007. Consequently, the appeal is not taken in good faith. *See*
7 *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's in forma
10 pauperis status be, and the same hereby is, REVOKED.

11 DATED March 22, 2017.

12 
13 UNITED STATES DISTRICT JUDGE

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